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property in cities and towns where there is an assessment for state taxes must be the same as the state assessment.

2. A city ordinance imposing a tax on the "capital stock" of banks located within the city was not in violation of Acts 1902-04, sec. 17, p. 163, providing that no tax shall be assessed on the "capital" of any bank.

[Ed. Note.—For cases in point, see vol. 36, Cent. Dig. Municipal Corporations, secs. 2029, 2052; vol. 45, Cent. Dig. Taxation, secs. 637, 638.]

3. Bank stock being declared to be personal property by Code 1904, p. 608, sec. 1173a, subsec. 7, such stock was covered by a city ordinance imposing a tax on "all personal property of every description, including capital stock of banks located within the city," though the latter clause should be construed as referring to the "capital" of the bank.

[Ed. Note.—For cases in point, see vol. 36, Cent. Dig. Municipal Corporations, secs. 2029, 2052; vol. 45, Cent. Dig. Taxation, secs. 637, 638.]

4. Certain bank stock having been assessed at its market value for state taxes, an ordinance imposing a tax of 90 cents on every \$100 of the "assessed value" thereof was not objectionable on the ground that such assessment was not on the market value of the stock, the assessment having been made on the assessed valuation for state taxes, as required by Const. art. 8, sec. 128 [Code, p. cexliii]; and Code 1904, p. 495, sec. 1033h.

5. Newport News City Charter, sec. 86, providing that the commissioner of revenue shall perform all the duties in relation to the assessment of property for city taxes that may be ordered by the council, applies only where there is no state assessment of the property within the city which can be followed as provided by Const. art. 8, sec. 128 [Code, p. cexliii], and Code 1904, p. 495, sec. 1033h.

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#### CONTINENTAL CASUALTY CO. v. PELTIER.

June 15, 1905.

[51 S. E. 209.]

#### ACCIDENT INSURANCE—DEATH—PROXIMATE CAUSE—INSTRUCTIONS — CURING ERROR.

1. Where, in an action on an accident policy insuring against death from accident solely and independently of all other causes, it appeared that deceased died from typhoid fever after an accident, and that there was no necessary or natural causal connection between deceased's injuries and the disease, an instruction that if deceased was injured by accident, and as a direct result of such injuries, as an exciting cause, some disease was set up in his body, which would not have happened but for his injuries, and from which disease deceased died, the injuries would be the proximate cause of his death, and that where death results from any disease which is the direct cause of an injury, and which would not have happened but for the injury, such injury, in contemplation of law, is the cause of death, was erroneous, as misleading the jury to speculate as to whether deceased died from injuries or disease, or from both concurring.

2. Such instruction was also erroneous as assuming that the injuries alone caused the disease, and as ignoring the provision requiring that the injury should be the sole and independent cause of death.

3. Where a policy covered death by accident only in case it was independent of all other causes, and deceased succumbed to an attack of typhoid fever following an accident, an instruction authorizing the jury to infer that, before any other cause than the injuries could be considered as a defense to the policy, it must appear to have been independent of the injuries, was erroneous.

4. Where instructions are inconsistent and contradictory, error in one of them containing an incomplete statement of the law was not cured by a complete statement thereof in the other.

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BRAMMER'S ADM'R v. NORFOLK & W. RY. CO.

June 15, 1905.

[51 S. E. 211.]

RAILROADS—CROSSINGS—TRAVELERS — CARE REQUIRED — DEATH — CONTRIBUTORY NEGLIGENCE — FAILURE TO LOOK AND LISTEN — PROXIMATE CAUSE — ACTS OF SERVANTS—NEGLIGENCE—LAST CLEAR CHANCE—EVIDENCE

1. A public railroad crossing is of itself a proclamation of danger, requiring a person about to cross to use both his eyes and ears to ascertain the approach of a train.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, secs. 1043-1056.]

2. Where plaintiff's intestate drove a covered wagon onto a railroad crossing without looking or listening for the approach of a train which was plainly visible for a distance of from 280 to 300 yards when intestate was within 20 or 25 feet of the track, deceased's contributory negligence, and not the failure of the train crew to give signals, was the proximate cause of the accident.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, secs. 1069, 1073.]

3. The act of a railroad fireman in "hooking" his fire as the engine emerged from a cut and approached a railroad crossing, which act was in the regular line of his duty, and temporarily prevented him from viewing the crossing, was not negligence.

4. Where deceased approached a railroad crossing at which he was killed from the side opposite to that on which the engineer sat, and the latter had no knowledge of deceased's peril until informed by the fireman, who did so as soon as, in the exercise of ordinary care, he could have ascertained the same, after which the engineer did everything possible to prevent a collision, defendant was not liable notwithstanding deceased's contributory negligence in going on the crossing.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, secs. 1096-1099.]